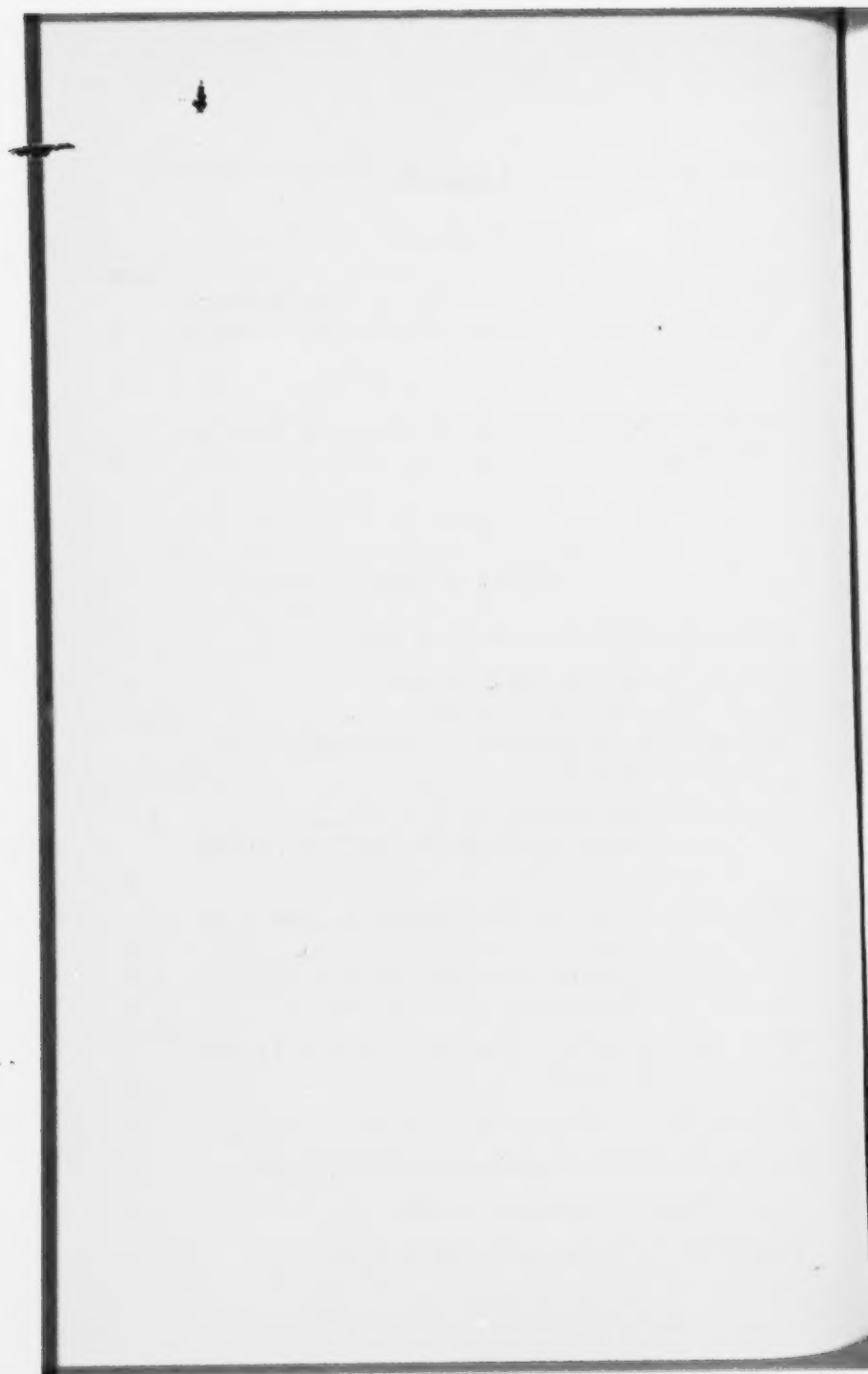


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Supreme Court of the United States

OCTOBER TERM, 1945.

No. 819.

CANADIAN RIVER GAS COMPANY,
Petitioner,
against

JOSEPH T. HIGGINS, formerly United States Collector
of Internal Revenue for the Third District of
New York,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

MOTION FOR LEAVE TO FILE OUT OF TIME PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI.

*To The Honorable The Chief Justice of The United States
and The Associate Justices of The Supreme Court of
The United States:*

The above-named petitioner, by its counsel, Arthur A. Ballantine and George E. Cleary, respectfully moves for leave to file at this time with your Honorable Court the annexed petition for rehearing of the petition for certiorari which was denied on March 25, 1946 (66 S. Ct. 818).

The ground for this unusual motion is that the decision of the Court below, review of which is sought, is in clear conflict with the decision of this Court handed down April

22, 1946, in *Burton-Sutton Oil Company, Incorporated, Petitioner, v. Commissioner of Internal Revenue*, October Term, 1945, No. 361. Since this decision was rendered after the expiration of the 25-day period within which a petition for rehearing could be filed as a matter of right, this motion for leave to file the petition for rehearing is necessary.

Jurisdiction.

The discretionary jurisdiction of this Court to grant leave to file such petition for rehearing is invoked under Rule XXXIII of this Court, notwithstanding the fact that more than twenty-five days have elapsed since the denial of said petition. The Court has previously exercised such jurisdiction (*Douglas v. Willcuts*, 293 U. S. 626, 295 U. S. 722, 296 U. S. 1). Under Rule XXXIII the Court has the power, vested in both trial and appellate courts, to reconsider its own decisions within the same Term (*Bronson v. Schulten*, 104 U. S. 410, 415; *United States v. Benz*, 282 U. S. 304, 306, 307; *Wayne Gas Co. v. Owens Co.*, 300 U. S. 131, 136; *Hazel-Atlas Co. v. Hartford-Empire Co.*, 322 U. S. 238, 244). This case originated in the District Court and not in the Tax Court, so that it is not governed by *R. Simpson & Co. v. Commissioner*, 321 U. S. 225. There is no statute comparable to Section 1140, Internal Revenue Code, which was the basis of that decision, applicable to decisions of the District Court.

Respectfully submitted,

ARTHUR A. BALLANTINE,
 GEORGE E. CLEARY,
 Counsel for Canadian River Gas
 Company, Petitioner.

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